

COURTS: A circuit court judge who was sued
COUNTIES: in the United States District Court
COUNTY COURTS: on a matter directly connected with
CIRCUIT COURTS: his judicial function as a Missouri
circuit court judge, has the author-
ity to appoint private counsel to represent him in the United
States District Court and to order the payment of a reasonable
and proper sum for the services of such counsel to be paid by
the county.

OPINION NO. 196

September 23, 1975

Mr. Donald Barnes
Assistant Prosecuting Attorney
Pettis County
202 West 4th Street
Sedalia, Missouri 65301



Dear Mr. Barnes:

This opinion is in answer to your question asking:

"Does the County Court of Pettis County have authority to, or may it in its discretion pay legal fees incurred by the Circuit Judge of Pettis County in his defense against a suit brought against him and the Prosecuting Attorney, Circuit Clerk and Sheriff of Pettis County in the U.S. District Court by persons under criminal charges in Pettis County, Missouri wherein the issues relate to the constitutionality of the statutes under which criminal charges were brought and damages for violation of constitutionally protected rights. (The suit was dismissed as against the Circuit Judge on the basis of judicial immunity)."

You also state that:

"A Pettis County, Missouri Grand Jury brought an indictment against Baker Protective Services, Inc. (Wells-Fargo) and other individuals under Sec. 562.190 R.S.Mo. arising out of the Ozark Music Festival occurring at the

Mr. Donald Barnes

State Fair grounds in July, 1974. Defendants brought an action in the U.S. District Court for the Western District of Missouri, Case No. 74-CV 205C to enjoin the Prosecuting Attorney of Pettis County, the Sheriff of Pettis County, the Circuit Clerk and Circuit Judge of Pettis County from processing the indictment and bringing defendants to trial alleging the statute to be unconstitutional.

"The Circuit Judge of Pettis County retained Kenneth Romines, a member of the Pettis County Bar to represent him in the matter. Mr. Romines submitted a statement to the Circuit Judge for his services in the matter, and the Circuit Judge has submitted the same to the County Court of Pettis County with a request that the same be paid to Mr. Romines by the County Court."

The case of State ex rel. Crow v. City of St. Louis, 73 S.W. 623 (Mo. 1903) has been called to our attention. In that instance the Missouri Supreme Court held that the city had the authority to indemnify a police officer from loss arising out of a suit against him because of an accidental shooting occurring in the course of his employment. We do not regard that case as solid authority in this instance inasmuch as the city involved was a charter city and the Missouri Legislature has provided specific indemnification of certain state officers, not including the judiciary, under the tort defense fund, § 105.710, RSMo Supp. 1973.

We note, however, in State ex rel. Gentry v. Becker, 174 S.W.2d 181 (Mo. 1943), and in later cases, the Missouri Supreme Court held, l.c. 183, that the courts have inherent power to incur reasonably necessary expenses for the holding of court and the administration of the duties of the courts, the limitation on such power being only that the expense incurred or the thing done must be necessary to preserve the court's existence and to protect it in the orderly administration of its business. While such powers have been denied administrative bodies which are not a part of the judiciary under Article V of the Missouri Constitution, (see, County of St. Francois v. Brookshire, 302 S.W.2d 1 (Mo. 1957)), there is no doubt that it is at this time well established that the circuit courts of this state do have such inherent power.

Mr. Donald Barnes

In the Gentry case, which we cited above, the court held that attorneys appointed by a circuit court judge to represent the state in a contempt proceeding were not entitled to be paid because it was deemed to be the function of an attorney to perform such a duty without compensation because he is an officer of the court. Since the Gentry holding the attitude of the court has changed regarding the duties of counsel which are required to be performed without compensation. That is, in State v. Green, 470 S.W.2d 571 (Mo.Banc 1971), the court held that the bar should no longer be required to represent indigents accused of a crime without compensation because such duties have become extremely burdensome.

Therefore, it is our view, in light of the holdings of the court in Gentry and Green, that the circuit court in such a case does have the authority to appoint private counsel to represent the court in order to preserve the integrity of the judicial system under Article V of the Missouri Constitution, and that the court may issue an order requiring the county to pay a reasonable and proper sum under § 476.270, RSMo, to such attorney for such services.

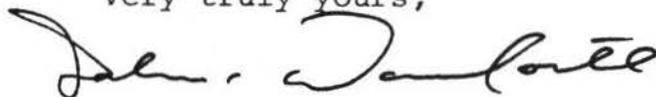
We base our views on the facts presented in this instance and the question of whether independent counsel may be so appointed in other situations must be decided on a case by case basis.

CONCLUSION

It is the opinion of this office that a circuit court judge who was sued in the United States District Court on a matter directly connected with his judicial function as a Missouri circuit court judge, has the authority to appoint private counsel to represent him in the United States District Court and to order the payment of a reasonable and proper sum for the services of such counsel to be paid by the county.

The foregoing opinion, which I hereby, approve was prepared by my assistant, John C. Klaffenbach.

Very truly yours,



JOHN C. DANFORTH
Attorney General